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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,298	04/09/2004	James R. Mujwid	75028-307907	1231
43541	7590	01/19/2007	EXAMINER	
WOOD, HERRON & EVANS (ZIMMER SPINE) 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			ARAJ, MICHAEL J	
		ART UNIT	PAPER NUMBER	
		3733		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	01/19/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/821,298	MUJWID ET AL.
	Examiner Michael J. Araj	Art Unit 3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 October 2006.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1 and 3-37 is/are pending in the application.
4a) Of the above claim(s) 24-30 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,3-9,15-21 and 32-37 is/are rejected.

7) Claim(s) 10-14,22 and 23 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 September 2006 is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9, 15-21 and 32-37 are rejected under 35 U.S.C. 102(b) as being anticipated by McGuire et al. (U.S. Patent No. 5,797,918).

McGuire et al disclose a surgical driver comprising an attachment piece having mounting structure, a shaft connected to the attachment piece (14) by a coupling arrangement being configured to transfer torque from the shaft to the attachment piece in a range of axial orientations relative to a longitudinal axis of the attachment piece in response to a side torque being applied to the shaft and permit the shaft to pivot relative to the attachment piece in a range of 1-30 degrees in any direction. The coupling arrangement includes one or more facets formed at a distal end of the shaft that permit the shaft to pivot in a range of axial orientations relative to a longitudinal axis of the attachment piece. The facets are located adjacent to a base of a knob (20). The coupling arrangement includes a recess formed in the attachment piece, the recess being configured to receive a distal end of the shaft. The attachment piece further includes a retaining member, and wherein at least a portion of the retaining member is positioned within the recess to detachably connect the shaft to the attachment piece. The attachment piece includes self-centering structure that axially aligns the shaft with

the attachment piece when the shaft is initially connected to the attachment piece because of the shape of the attachment piece when it is attached to the shaft. This device further including a handle coupled to a proximal end of the shaft. The mounting structure of the attachment piece includes a pin structure having arms that extend outward from a distal end of the attachment piece wherein the arms provide a snap-fit connection (see Figure 1 below).

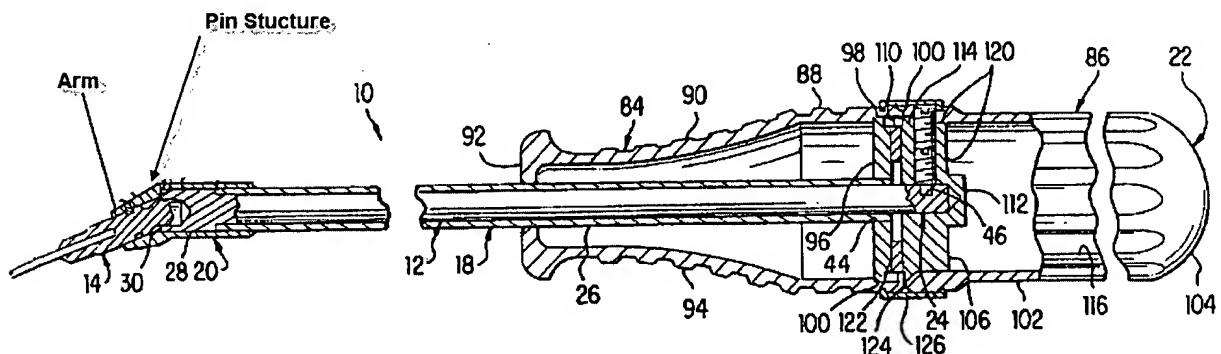


Figure 1 (modified from 5,797,918)

Allowable Subject Matter

Claims 10-14, 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed October 23, 2006 have been fully considered but they are not persuasive. Applicant argues that McGuire et al. does not have a shaft that is permitted to pivot relative to the attachment piece in a range of axial orientations relative to a longitudinal axis of the attachment piece in response to a side torque being applied to the shaft. Applicant argues that the drive head housing (20) orients the drive shaft (14) at a fixed angular position relative to the operating shaft therefore showing that McGuire et al. is not permitted to pivot relative to the drive shaft in a range of axial orientations. Examiner disagrees because even though the drive head housing (20) supposedly orients the drive shaft it does not mean that the shaft pivots relative to the attachment piece. The method of how the drive shaft is not claimed. Therefore, it is irrelevant that the drive head housing (20) orients the drive shaft (14). Also note that part 14 pivoted relative to part 12 can be equally interpreted as part 12 pivoted relative to part 14.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

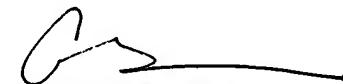
shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Araj whose telephone number is 571-272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MJA


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